IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1145 OF 2005

WITH

CIVIL APPLICATION NO.1415 OF 2005

T. Balram Pai & Ors. ..Appellants.

Vs.

Smt.Poornima Prabhakar Kamath

& Ors. ..Respondents.

...

Mr.P.C.Kansara for the Appellants.

Mrs.Aarti Bhide for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

22nd December, 2005.

P.C. :

Not on Board. Mentioned.

Admit. By consent taken up for hearing.

1. The Learned Trial Judge in the City Civil Court has by an order dated 12th December, 2005

granted an order of injunction restraining the Appellants, pending the disposal of the Motion from entering upon the suit premises consisting of a hotel, known by the name and style of Shree Krishna Hindu Hotel situated on the ground floor of a building known as La Repose, opposite K.E.M. Hospital, Parel, Mumbai and room Nos.8 to 11, 13 and 14 on the first floor. Counsel appearing for the Appellants states that the Appellants are not in possession of the premises of the hotel situated on the ground floor and of room No.8 to 11 and 13 on the first floor. However, it has been submitted that the Learned Trial Judge ought not to have granted an injunction in respect of one room, room No.14 on the first floor of the premises.

2. The Respondents are the Plaintiffs before the City Civil Court and it is their case that the father-in-law of the First Respondent started a restaurant on the ground floor in the year 1934. Rent receipts still continue to be in the name of the father-in-law of the First Respondent. The Second Respondent is a daughter of the First Respondent. According to the Respondents, the husband of the First Respondent Prabhakar Kamat

continued the business after the death of his father. Prabhakar Kamat expired on 5th June, 1998 and it has been stated that after his death the First Respondent continued to conduct the hotel with the help of the Second Respondent. The First Respondent has also averred that she took room Nos.9 to 11 on the first floor on rent and that all the rent receipts stand in the name of the family of the Plaintiffs. All the licences after the death of the husband of the First Respondent - Plaintiff are transferred in her name. The First Respondent has stated that she has disclosed the income from the hotel as her business income in the income tax returns and she has been paying the sales tax and other dues including E.S.I. contribution in respect of her employees. The First Appellant is alleged to have been working as a cook in the hotel and he was sent for medical examination as a food handler by the Municipal Corporation. Receipts in respect of the wages have been relied upon in the suit. Appellants 2 and 3 also joined subsequently as employees of the hotel and it is common ground that the employees' contribution in respect of the employees including in respect of the aforesaid persons has been paid.

The First Respondent has averred that due to her advanced age, she handed over the business to her daughter, the Second Respondent and that she had been to the U.S. until April 2005 to stay with one of her daughters. At this stage, it has been alleged that Appellants 1 to 3 misappropriated large amounts from the account of the Plaintiffs and took unlawful custody of the muster and other registers showing them as employees. Thereafter it has been alleged that Defendants 5 and 6 have stayed in and occupied room No.14 forcibly.

3. The First Appellant instituted a suit before the City Civil Court, being S.C. Suit 3627 of 2005 on 8th September, 2005 seeking a mandatory order of injunction against the Respondents calling upon them to remove themselves from rooms 8 to 11 and 13 and to hand over possession thereof. In that suit, ad interim relief came to be declined by the Trial Court on 15th September, 2005. This Court confirmed that order on 29th September, 2005.

4. The suit out of which these proceedings arise came to be instituted by the Respondents on the allegation that they were being harassed by the

Appellants and have been constrained to file a police complaint on 10th October, 2005. An apprehension was expressed that the Appellants with the support of anti-social elements would disturb the possession of the First Respondent who is a widow and a senior citizen and the Second Respondent who is her daughter. A permanent injunction has been sought in the suit. A Motion for an interlocutory order of injunction came to be filed, which culminated in the order of the Learned Trial Judge which is impugned in these proceedings.

5. The case of the Appellants, particularly of the First Appellant, is that the business of the hotel was being conducted by them and that the First Appellant is a conductor of the business. The Learned Trial Judge has noted that the Appellants have not been able to produce at this stage any document to support their case of being inducted to conduct the business. A document dated 22nd January, 1998 upon which reliance has been placed has not been signed by the parties or executed. As already noted above, counsel appearing for the Appellants has stated in the course of the oral submissions that the Appellants

are not in possession of the premises of the hotel or of room Nos.8 to 11 and 13 on the first floor. However, it was submitted that the Appellants are in possession of room No.14 and, that possession ought to have been safeguarded by not granting an order of injunction to the Respondents in respect of the said room. The Learned Trial Judge has held that the possession of Room No.14 must be possession in law to be with the tenants viz. the Respondent Plaintiffs. None of the documents would show that the Appellants were inducted as conductors. In these circumstances, an injunction has been granted also in respect of room No.14.

6. In assessing as to whether the Learned Trial Judge was justified in granting an injunction in respect of room No.14, it would be material to note the pleadings of the Appellants themselves in S.C. Suit 3627 of 2005 which was instituted on 8th September, 2005. That suit contains a reference to the suit premises as consisting of the hotel on the ground floor and six rooms viz. rooms 8 to 13 on the first floor. In paragraph 3 of the plaint a direction has been sought against the Respondents herein to remove themselves from rooms 8 to 11 and

13. The reference to these rooms occurs at several parts of the plaint, including in paragraph 4(u) and paragraph 6. If there were any substance in the contention that it was the Appellants who are in possession of room No.14, it is impossible to conceive that this would not have found a mention in the plaint which was instituted by the Appellants as recently as on 8th September, 2005. There is no mention that room No.14 has been in possession of the Appellants in the suit. In these circumstances, the Learned Trial Judge was, in my view, justified in coming to the conclusion that the Respondents are entitled to an order of injunction. The business was originally conducted by the grandfather of the Second Respondent and after his life time by the father of the Second Respondent and the husband of the First Respondent. The rent receipts and licences stand in the name of the Respondents. The E.S.I. record would show that the E.S.I.Contribution has been paid in respect of the Appellants on the basis that they were employees. In these circumstances, the Appellants have no lawful basis to claim any right, title or interest in respect of the premises or the business conducted therein.

7. Since the Motion taken out by the Appellants in their suit (S.C. Suit 3627 of 2005) has been dismissed by the Learned Trial Judge on 12th December, 2005, it is not necessary for this Court to make any observation in regard to the merits of that matter since that is not the subject matter of the Appeal.

8. In the circumstances, having considered the matter I am of the view that the order of the Learned Trial Judge does not warrant any interference. The Appeal shall stand dismissed.

In view of the disposal of the Appeal from Order, the Civil Application is rendered infructuous and is accordingly disposed of.